



Risking their Futures:

Why trying nonviolent 17-year-olds as adults is bad policy for Wisconsin

Seventeen-year-olds make mistakes—a lot of them. But we have all been 17 and have made mistakes, and most of us have moved on to become productive members of society. Twelve years ago, however, the mistakes of 17-year-olds in Wisconsin were transformed from childish indiscretions to permanent blots on their records.

In 1996 Wisconsin changed the state's juvenile justice landscape by excluding 17-year-olds entirely from the juvenile court. Initially this was an effort to save resources and improve community safety by incarcerating older teens as adults, under the theory of "adult crime, adult time." At the time of the legislative change, there was little research to suggest that trying youth as

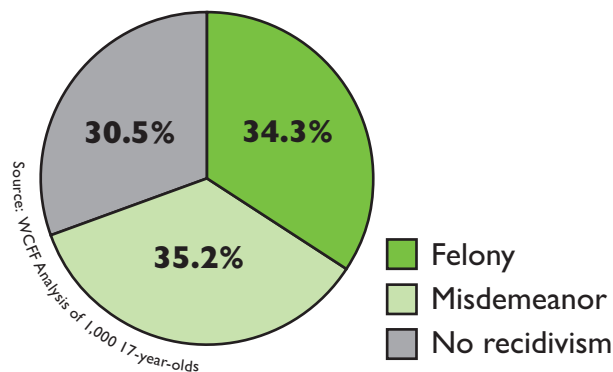
adults would improve community safety. Since then, research has effectively contradicted the premise that the change would make communities safer.

According to a recent study published by the U.S. Centers for Disease Control and Prevention, trying youth under 18 in the adult criminal justice system significantly increases crime and has a negative impact on community safety.¹ Both in Wisconsin and nationally, the data speaks volumes: Trying youth as adults creates more crime. To better understand the long-term consequences in Wisconsin of trying all 17-year-olds as adults, the Wisconsin Council on Children and Families analyzed the criminal histories of 1,000 17-year-olds from 2001 through 2007.

WCCF Analysis of 1,000 17-year-old offenders

The outcomes for the 1,000 17-year-olds analyzed in this paper were troubling. WCCF reviewed the records of 1,000 17-year-olds convicted in 2001 to ascertain how many committed a new crime before September, 2007. For those who did commit a new crime, the severity of the crime was noted. Seventy percent of the youth whose records were reviewed were convicted of a new crime within the follow up period (see Chart 1). Reconvictions were equally split between felonies and misdemeanors. Of the recidivists, over half were convicted of more than one crime in the follow up period.

Chart 1: Overall Recidivism



Methodology:

Using data gathered through the Wisconsin Consolidated Court Automation Program (CCAP) we analyzed the first 1,000 17-year-old offenders with cases dated beginning January 1, 2001. The offenders' files were then reviewed until September 1, 2007 for an average follow up period of 6.5 years (follow-up periods ranged from 6.33 to 6.75 years).

For the purposes of this analysis, a case is defined as a criminal filing on a person who was 17-years-old at the offense date, for a matter which was neither a traffic violation nor a forfeiture, and was not eventually dismissed. Individuals were counted only once in the sample. Recidivism is defined as a subsequent criminal conviction with any disposition (also not including dismissed cases, traffic matters or forfeitures). The sample included 169 females and 812 males, and was 23% youth of color and 67% Caucasian. 10% of youth had no information on race/ethnicity, and 2% had no information on gender.

A typical 17-year-old: Trevor

Trevor had his first contact with law enforcement at the age of 17 for disorderly conduct, a misdemeanor. Both of his parents had substance abuse addictions and Trevor began abusing drugs and alcohol at 13. Trevor's father has been in prison for the past 20 years, and Trevor witnessed domestic violence at home against his mother by multiple boyfriends. Trevor dropped out of school in 9th grade and moved in with his grandmother.

Since his first arrest, Trevor has spent the past several years in and out of jail for alcohol-related disorderly conduct charges. He has received little in the way of alcohol treatment and has not yet completed his GED. If he could make one change in the system, he wishes he could have received treatment for his alcohol addiction when he was first arrested rather than just sit in the adult jail with older drug-addicted adults.

Trevor will be getting out of jail again soon, a month after his 25th birthday. He has a baby on the way and is planning to move in with his girlfriend, get a job and stay sober. He understands that this is his last chance, and if he gets in trouble again he will go to prison.

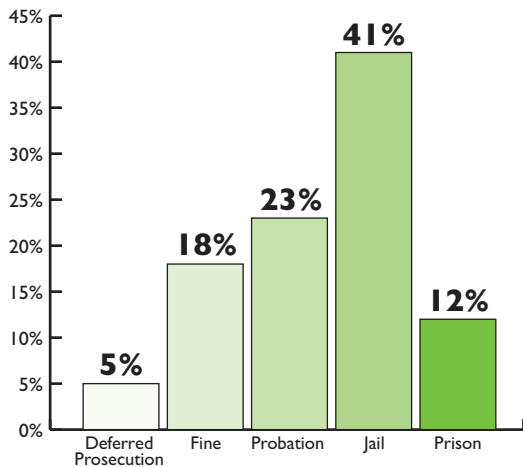


Photo courtesy of Operation Fresh Start

The most common sentence for 17-year-olds sampled was a jail sentence, followed by probation, a fine and prison (see Chart 2). Deferred prosecution was rarely utilized in the sample population. More than half of the cases resulted in sentences to some sort of confinement, either jail or prison, even though 78 percent of offenders studied were convicted of misdemeanors.

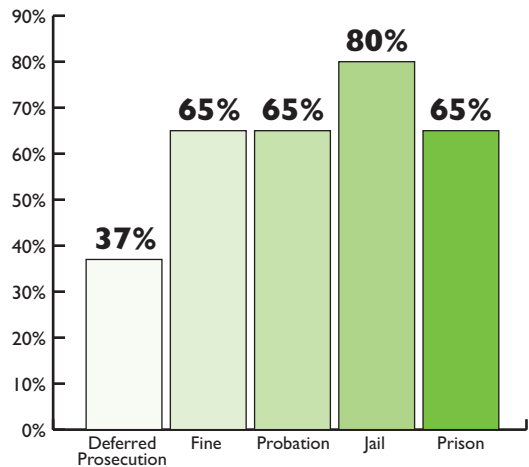
Outcomes for 17-year-olds varied depending on their sentences (see Chart 3). Deferred prosecution yielded the lowest recidivism rate at 37 percent; it was the least common disposition, offered to only 5 percent of offenders. The most frequent sentence, jail, produced the highest recidivism rate at 80 percent.

Chart 2: Dispositions: All 17-year-olds



Source: WCCF Analysis of 1,000 17-year-olds

Chart 3: Recidivism Rate by Disposition

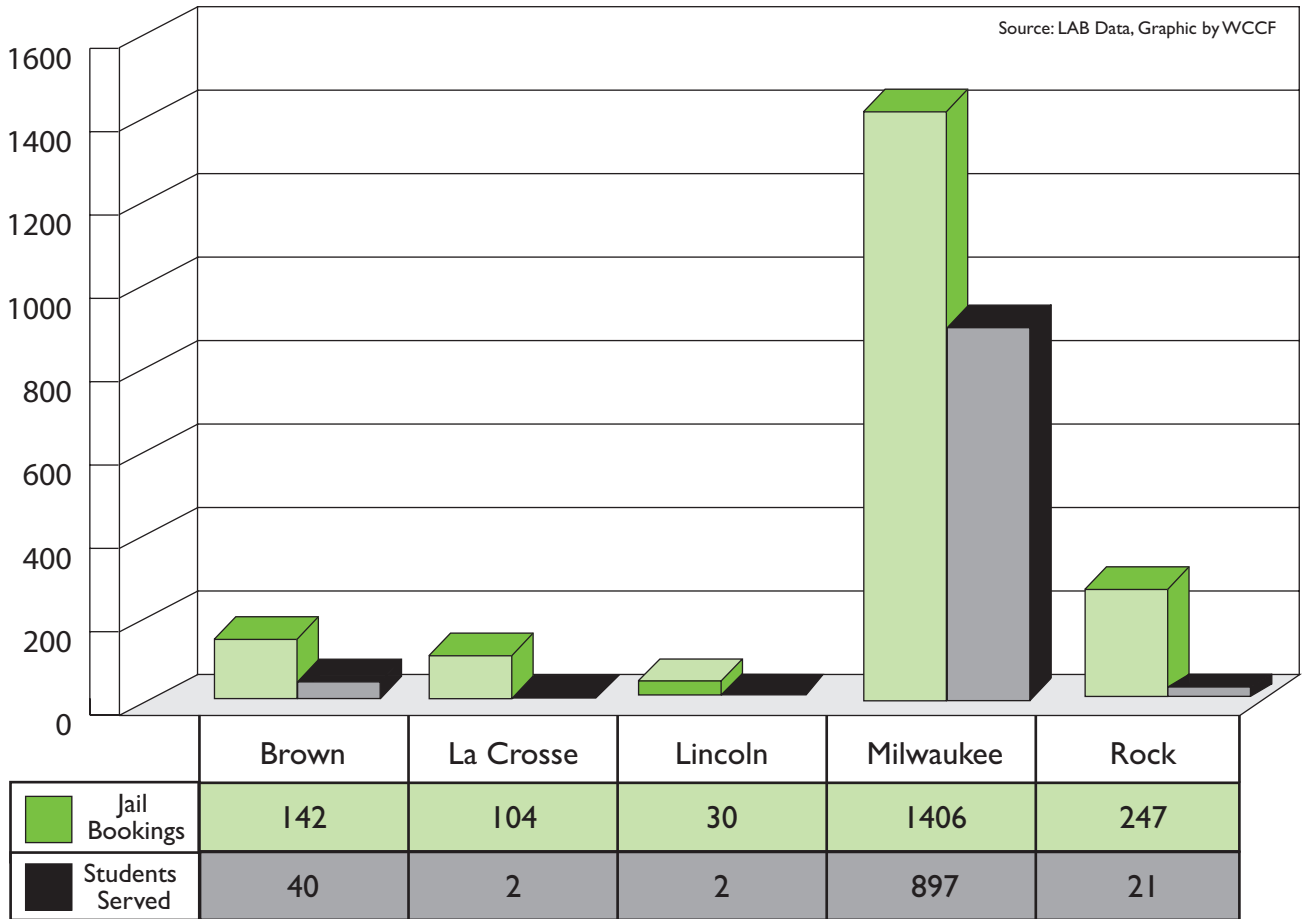


Source: WCCF Analysis of 1,000 17-year-olds

Upon closer examination of the jail’s ability to serve 17-year-olds, it is not surprising that youth with jail sentences are the least likely to stay out of trouble after their release. According to data presented in the Legislative Audit Bureau’s analysis of 17-year-olds in the adult system, few services are available in the adult jail system. Chart 4 compares the number of 17-year-olds admitted

to adult jails in selected counties with the number of those youth who were provided an education. The number of students served varied greatly by county. In each instance the services were less than the 5 hours per day of education that would have been standard in the juvenile system.

Chart 4: 2006 Educational Services to 17-Year-Olds in Jail



A typical day in jail: Dan

Dan is a typical 17-year-old from our sample. His first arrest, a few days after his 17th birthday, was for minor theft. He received five months of jail time. Dan did not know that he would be treated as an adult, and was expecting to go to juvenile detention.

Dan’s daily schedule in adult jail was sparse; he would sleep fourteen or more hours a day. After waking up for a 5:30 a.m. count, he would eat breakfast, go back to sleep until 11, eat lunch, watch television and play cards until dinner, and then go back to sleep. After a period of time where he had no educational services, Dan was offered one hour of classes, three days per week. While in the adult jail, Dan tried to keep his family from visiting to spare them the pain of seeing him in that atmosphere. He is afraid that his life will be forever changed because of the stupid mistake he made.

Racial Disparities in Sentencing 17-Year-Olds

In the sample studied, African Americans made up 18 percent of the youth overall, 27 percent of the youth with incarceration orders (jail or prison), and less than 8 percent of youth with sentences of probation, fines or deferred prosecution.² In all, of the 180 African American youth studied, only 35 received community sentences. In statewide and national studies, Wisconsin has been highlighted as a state where large racial disparities exist in sentencing practices. This sample appears to support that assessment. Table 1 shows the dispositions by race and ethnicity.

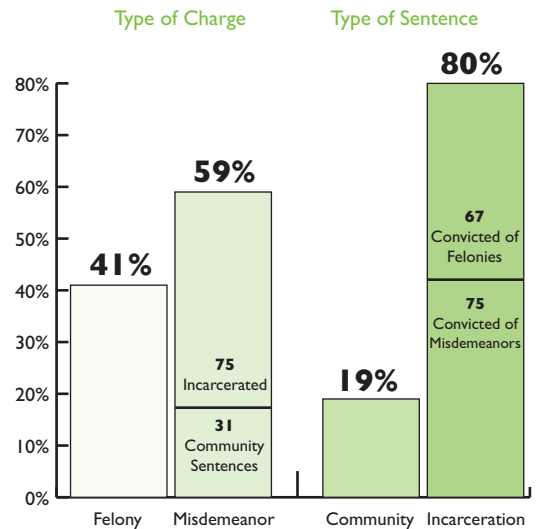
Table 1: Dispositions by Race and Ethnicity

	Jail or Prison	Fine, Probation or Deferred Prosecution
African American	80%	19%
American Indian	60%	40%
Asian	33%	66%
Caucasian	46%	53%
Hispanic	52%	42%
No Info	50%	50%
Average for All	54%	45%

Source: WCCF Analysis of 1,000 17-year-olds

The most troubling racial disparities arise when comparing custody orders (jail or prison) versus community-based orders. As shown in Chart 5, while African Americans are charged with mostly misdemeanors, the vast majority of sentences result in incarceration. Nearly three-quarters (71%) of the African American youth who were charged with misdemeanors were sentenced to incarceration. Among the African American youth who were incarcerated, more than half were charged with misdemeanors.

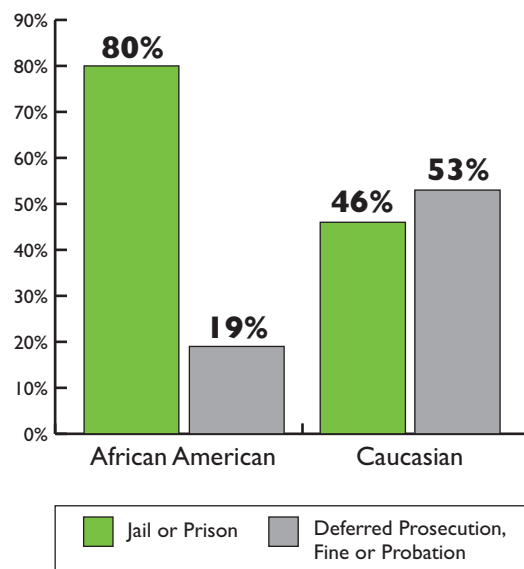
Chart 5: Charges and Sentencing Among African Americans



Source: WCCF Analysis of 1,000 17-year-olds

Comparing Caucasians and African Americans on sentencing reveals a wide disparity. Few African American youth in our sample were given the opportunity for rehabilitation in a community setting; nearly all were sentenced to some sort of incarceration (see Chart 6).

Chart 6: Disposition by Race



Source: WCCF Analysis of 1,000 17-year-olds

The Governor’s Commission on Reducing Racial Disparities in the Wisconsin Justice System studied the problem of minority overrepresentation in prison and came up with a number of recommendations. One recommendation was to return 17-year-olds to the juvenile court, while retaining judges’ flexibility to try those accused of more serious crimes in the adult system. The report stated:

*Consistent with the results of the January, 2008 Legislative Audit report, legislation should be introduced to return jurisdiction of 17 year olds alleged to have violated state or federal criminal laws to juvenile courts. Current waiver provisions should be maintained.*³

Recidivism in the Corrections Populations

The Wisconsin Legislative Audit Bureau (LAB) released a report in January of 2008 that used Wisconsin Department of Corrections (DOC) data to compare the recidivism rates of 17-year-olds in adult corrections to those of younger and older offenders (see Chart 7). They studied both the volume of re-offenders (recidivism rate) and the severity of re-offenses. According to the DOC data used in the audit, nearly half of the 17-year-olds released from adult prison in 2002 were reincarcerated within three years.⁴

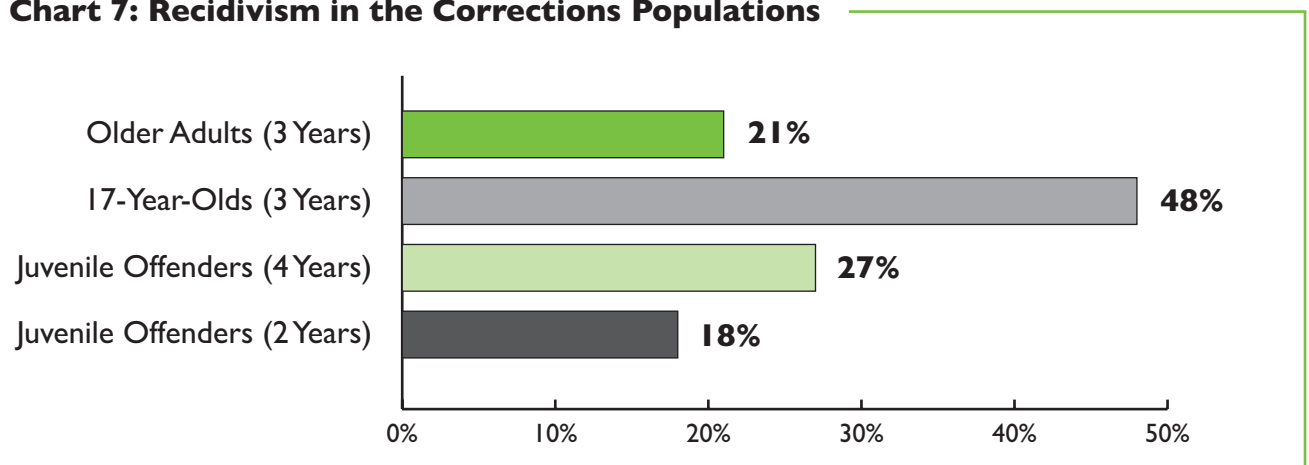
Significantly, the recidivism rate for 17-year-olds incarcerated in adult prisons was nearly double that of younger teens treated in the juvenile system, despite the longer follow up period for the juvenile offenders.⁵ As shown in Chart 7, the volume of subsequent offenses is higher for 17-year-olds than for any other age group.

Data from WCCF’s study of 1,000 offenders is consistent with data from the LAB study and national research: Trying youth under 18 as adults produces very high recidivism rates and therefore compromises community safety. In light of this research, we must reevaluate current practices and make smarter choices about our treatment of 17-year-olds in the justice system.

Solutions

Trying all 17-year-olds as adults for any crime has been a mistake. We must return 17-year-olds accused of nonviolent crimes to the juvenile justice system so they can get the treatment they need to change behavior and move on to adulthood without the mark of an adult criminal record. The adult system lacks the kind of resources for education and rehabilitation found in juvenile system. Instead of receiving the services they need, youth in the adult system end up receiving an adult criminal record that sticks with them the rest of their lives.

Chart 7: Recidivism in the Corrections Populations



Source: Reproduction of LAB Graph, p.7 Audit Report



A system that treats 17-year-olds fairly would hold them accountable for their actions and give them the opportunity to reform themselves. By providing youth with the resources available only through the juvenile courts, we can improve outcomes and make our communities safer.

Glossary:

Crime: A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by forfeiture is not a crime.

Case: For the purposes of this analysis, a case is defined as a criminal filing on a person who was 17 years old at the offense date, for a matter which was neither a traffic violation nor a forfeiture, and was not eventually dismissed.

Disposition: The disposition of a criminal case is its outcome, the sentence the judge gives the offender. Examples of dispositions include deferred prosecution, fines, probation, jail or prison sentences.

Deferred Prosecution: An alternative agreement between the prosecutor and the offender where the offender agrees to comply with certain programming and other conditions in exchange for the prosecutor waiting to file a case until the conditions are met. Once the conditions are met, the case is typically withdrawn.

Recidivism: For the purposes of this paper, a new conviction after an initial case is recidivism. Note – Recidivism is often measured differently. For example, the Wisconsin Department of Corrections measures new incarcerations as recidivism.

¹ “Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System”, Morbidity and Mortality Weekly Review, November 30, 2007. www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm.

² Race and ethnicity data is as reported in CCAP. Ten percent of the sample studied had no race or ethnicity data available.

³ Commission on Reducing Racial Disparities in the Wisconsin Justice System final report, February 2008, page 14.

⁴ Legislative Audit Bureau, Report 08-3, A Review: 17-Year-Old Offenders in the Adult Criminal Justice System, February 2008, page 7.

⁵ Recidivism rates typically increase each year over the first several years of a recidivism study. For example, in a Bureau of Justice Statistics recidivism study, the percentages were 21.5% in the first year, 36.4% combined over the first two years, and 46.9% combined over the first three years. Given these trends, it would be reasonable to expect that a four year recidivism follow up (as in the juveniles in recidivism chart) would be greater than a three year (as in the 17-year-olds).

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